



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Cleta Mitchell, Esq.  
Foley & Lardner, LLP  
3000 K Street, NW #600  
Washington, DC 20007

AUG 24 2017

RE: MURs 7093 and 7145

Dear Ms. Mitchell:

On July 5 and October 12, 2016, the Federal Election Commission notified your clients, Frank Guinta and Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer ("Respondents"), of complaints alleging violations of the Federal Election Campaign Act of 1971, as amended. Upon further review of the allegations contained in the complaints and information provided by the Respondents, on August 17, 2017, the Commission found that there is no reason to believe that the Respondents violated the Conciliation Agreement entered into in MUR 6440, and no reason to believe the Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$355,000 repayment to the Guinta Family Fund. Furthermore, on that same date, the Commission also voted to dismiss the remainder of the allegations against the Respondents. Accordingly, the Commission closed the files in these matters.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If you have any questions, please contact Derek H. Ross, the attorney assigned to this matter, at (202) 694-1579.

Sincerely,

Lynn Y. Tran  
Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Friends of Frank Guinta and Paul MURs 7093 & 7145  
Kilgore in his official capacity  
as treasurer  
Frank Guinta

**I. INTRODUCTION**

The Complaints arise out of the Conciliation Agreement ("CA") entered into between former Congressman Frank Guinta, Friends of Frank Guinta and Paul Kilgore in his official capacity as treasurer ("the Committee") and the Commission in MUR 6440. In the CA, the Committee agreed to repay \$355,000 to Guinta's parents that it previously reported as a personal loan from Guinta. The Complaints allege that Guinta violated the CA and the Federal Election Campaign Act of 1971, as amended ("the Act"), by not returning loan repayments he received from the Committee before entering into the CA, and by maintaining access to the \$355,000 that the Committee refunded to Guinta's parents. The Complaints also allege that the Committee violated Commission regulations because the loan repayments to Guinta caused the Committee to have less cash on hand than general election contributions received.

As set forth below, the Commission finds no reason to believe that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) or the CA by converting the \$355,000 to personal use. The Commission also dismisses as a matter of prosecutorial discretion the allegations that the loan repayments to Guinta violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g), and that Respondents violated 11 C.F.R. § 102.9(e)(2) by having less cash on hand than general election funds.

**II. FACTUAL BACKGROUND**

On April 29, 2015, the Commission approved a CA with Guinta and the Committee in MUR 6440.<sup>1</sup> Prior to reaching the CA with the Commission, Guinta categorized a loan from the Guinta Family Fund as a personal loan he made to the Committee. Under the terms of the CA, the Committee agreed that it received excessive contributions from the Guinta Family Fund, which the Commission determined belonged to Guinta's parents.<sup>2</sup> Guinta previously argued that he had legal or equitable title to the Guinta Family Fund under various theories, but the Commission ultimately disagreed.<sup>3</sup> The CA also required the Committee to refund \$355,000 to the Guinta Family Fund and pay a \$15,000 civil penalty.<sup>4</sup> After the CA was executed, the Committee removed the remaining debt it reported owing from its disclosure and recorded a new debt of \$355,000 owed to the Guinta Family Fund, which was refunded on January 15, 2016.<sup>5</sup>

Prior to the execution of the CA, the Committee over time repaid Guinta \$81,500 of the purported loan.<sup>6</sup> While these repayments were known at the time the CA was executed, the CA did not address the payments the Committee made to Guinta prior to the reclassification of the loan.

The Complaints allege three violations. The Complaint in MUR 7093 alleges that Guinta kept the loan repayments he received even after the debt was reclassified as owed to, and later

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<sup>1</sup> Conciliation Agreement, MUR 6440 (Guinta) (May 6, 2015) ("CA"); Cert., MUR 6440 (Guinta) (Apr. 30, 2015).

<sup>2</sup> *Id.* ¶ IV, 1.

<sup>3</sup> Factual & Legal Analysis at 4-7, MUR 6440 (Guinta) ("F&LA").

<sup>4</sup> CA ¶ VI.

<sup>5</sup> Resp. at 1-2; *see* 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

<sup>6</sup> *Id.* at 4, n.1. Respondents submitted a joint response.

1 repaid to, the Guinta Family Fund.<sup>7</sup> It argues that “[b]y not reimbursing the Committee, Frank  
2 Guinta has illegally received and retained \$81,500 in contributions to his campaign for his  
3 personal use.”<sup>8</sup>

4 The Complaint in MUR 7093 also alleges that the Committee violated 11 C.F.R.  
5 § 102.9(e)(2) because it did not have enough cash on hand after making the repayment to the  
6 Guinta Family Fund.<sup>9</sup> It argues that when the \$355,000 repayment was made during the 2016  
7 primary election period, the Committee only had \$279,371.14 of primary election funds  
8 available to it. That repayment, it alleges, caused the Committee to have less cash on hand than  
9 general election funds received, in violation of Commission regulations.

10 Finally, the Complaint in MUR 7145 argues that Respondents violated the Act and the  
11 CA by converting campaign funds to personal use.<sup>10</sup> Specifically it argues, based on media  
12 reports regarding Guinta’s congressional financial disclosures, that after the Committee refunded  
13 the \$355,000, those funds were either “laundered” to Guinta or put into a bank account that he  
14 could personally access.<sup>11</sup> They argue that the money was supposed to be refunded to Guinta’s  
15 parents, who the Commission determined had legal title to the funds.<sup>12</sup> Guinta or his  
16 representatives have made statements in response to media inquiries confirming that the  
17 \$355,000 was repaid to the Guinta Family Fund and that Guinta has access to that account.<sup>13</sup>

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<sup>7</sup> Compl. at 1-2, MUR 7093.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> Compl. at 1-2, MUR 7145.

<sup>11</sup> *Id.*; The media reports were purportedly based on Guinta’s 2015 House of Representatives Financial Disclosure Report. *See Financial Disclosure Reports Database*, U.S. HOUSE OF REP. OFFICE OF THE CLERK, [http://clerk.house.gov/public\\_disc/financial-search.aspx](http://clerk.house.gov/public_disc/financial-search.aspx); *see also* Compl. Ex. 1, MUR 7145.

<sup>12</sup> Compl. at 1-2, MUR 7145.

<sup>13</sup> *See, e.g.,* Compl. at Ex. 1, MUR 7145.

1 Respondents do not address many of the allegations, and instead dedicate the bulk of  
2 their Response to arguing that the Complainants lack standing to complain about whether  
3 Respondents violated the CA or to attack the terms of the CA.<sup>14</sup> Specifically, they argue that the  
4 Act allows only the Commission and not outside individuals or organizations to review  
5 compliance with a conciliation agreement.<sup>15</sup> They further argue that because they have complied  
6 with the terms of the CA, there is no basis for any Commission action.<sup>16</sup>

7 With respect to the substantive allegation in the Complaints, Respondents state that the  
8 repayment of the \$81,500 was not governed by the CA, and in any event Guinta repaid that  
9 money to the Committee, so there is no violation.<sup>17</sup> Respondents also confirm that, as required  
10 by the CA, the \$355,000 was repaid to the Guinta family.<sup>18</sup>

11 **III. LEGAL ANALYSIS**

12 At the outset, Respondents' standing and jurisdictional arguments can be dismissed. The  
13 very terms of the CA state that "[t]he Commission, on the request of *anyone* filing a complaint  
14 under 52 U.S.C. § 30109(a)(1) . . . concerning the matters at issue [in the CA] or on its own  
15 motion, may review compliance with [the CA]."<sup>19</sup> There is nothing in the Act that prevents the  
16 Commission from examining whether a party to a conciliation agreement has complied with its  
17 terms, and there is nothing that prevents the general public from filing a complaint alleging the

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<sup>14</sup> Resp. at 2-4.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> *Id.*

<sup>17</sup> Resp. at 4-5; see 2016 July Quarterly Report at 41, Friends of Frank Guinta (July 15, 2016).

<sup>18</sup> Resp. at 4-5; see 2016 April Quarterly Report at 52, Friends of Frank Guinta (April 15, 2016).

<sup>19</sup> CA ¶ VII (emphasis added); see also 52 U.S.C. § 30109(a)(1).

1 terms were violated. Any other reading of the Act would leave the Commission powerless to  
2 enforce its own agreements.

3 **A. Personal Use**

4 The bulk of the allegations in the Complaints argue that Guinta has converted campaign  
5 funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by retaining  
6 the \$81,500 he received from the Committee and by having access to the \$355,000 that the  
7 Committee refunded to the Guinta Family Fund. Personal use is defined as “any use of funds in  
8 a campaign account of a present or former candidate to fulfill a commitment, obligation or  
9 expense of any person that would exist irrespective of the candidate’s campaign or duties as a  
10 Federal officeholder.”<sup>20</sup> The Act prohibits converting contributions made to candidate  
11 committees to personal use.<sup>21</sup>

12 The record indicates that the Committee returned the \$355,000 to the Guinta Family Fund  
13 as required by the CA.<sup>22</sup> The Complaint does not allege that Guinta used funds from the Guinta  
14 Family Fund in connection with his campaign after the resolution of MUR 6440. The  
15 Committee’s filings with the Commission reflect that it has not received any personal loans from  
16 Guinta or the Guinta Family Fund subsequent to the resolution of MUR 6440. Once the  
17 Committee repaid the Guinta Family Fund, the \$355,000 was no longer a “contribution accepted  
18 by a candidate” or “any other donation received by an individual as support for the activities of  
19 the individual as a holder of Federal office,” and the funds in the Guinta Family Fund would not  
20 be subject to the personal use restrictions of the Act.<sup>23</sup> The Commission therefore finds no

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<sup>20</sup> 11 C.F.R. § 113.1(g).

<sup>21</sup> See 52 U.S.C. § 30114(b).

<sup>22</sup> See 2016 April Quarterly Report at 52, *Friends of Frank Guinta* (April 15, 2016).

<sup>23</sup> 52 U.S.C. § 30114(b).

1 reason to believe the Respondents violated the terms of the CA or violated the Act's personal use  
2 prohibition of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$355,000.

3 The record also indicates that although the \$81,500 payments to Guinta were not  
4 governed by the CA, he has since repaid those funds to the Committee.<sup>24</sup> Although the CA did  
5 not address how Guinta should handle the \$81,500 that had already been repaid by the  
6 Committee, it did require the redesignation of the loan to reflect that the funds were from the  
7 Guinta Family Fund and not Guinta personally. Given the circumstances behind the initial  
8 payment to Guinta, which was known at the time that the Commission resolved MUR 6440, we  
9 do not believe this matter warrants additional use of Commission resources to further assess  
10 whether the \$81,500 payment violated the Act. Accordingly, the Commission exercises its  
11 prosecutorial discretion and dismisses the allegations that Respondents violated 52 U.S.C.  
12 § 30114(b) and 11 C.F.R. § 113.1(g) in regard to the \$81,500 payment to Guinta.

13 **B. Use of General Election Funds**

14 Commission regulations provide that a candidate or authorized committee may, prior to a  
15 primary election, accept contributions designated by the contributor for use in connection with  
16 the general election.<sup>25</sup> The recipient committee, however, must "use an acceptable accounting  
17 method to distinguish between contributions received for the primary and contributions received  
18 for the general election."<sup>26</sup> The committee's "records must demonstrate that, prior to the primary  
19 election, recorded cash on hand was at all times equal to or in excess of the sum of general

<sup>24</sup> See 2016 July Quarterly Report at 41, Friends of Frank Guinta (July 15, 2016).

<sup>25</sup> 11 C.F.R. § 102.9(e).

<sup>26</sup> *Id.*

1 election contributions received less the sum of general election disbursements made.”<sup>27</sup> “These  
2 regulations are designed to ensure that candidates . . . do not use general election contributions  
3 for the primary election.”<sup>28</sup> If the candidate is not a candidate in the general election, the general  
4 election contributions must be refunded to the contributors or redesignated.<sup>29</sup>

5 Here, it appears that the repayment of the \$355,000, which occurred prior to the primary  
6 election, may have caused the Committee to have less cash on hand than general election  
7 contributions received. According to the Complaint, at the time of the refund, the Committee  
8 had \$367,171.14 on hand, \$87,800 of which was designated as general election funds.<sup>30</sup> A  
9 \$355,000 disbursement would result in the Committee having approximately \$12,000 cash on  
10 hand, less than the required \$87,800 of general election contributions.

11 The circumstances present in this matter, however, warrant the Commission exercising its  
12 prosecutorial discretion and dismissing the allegations that the Respondents violated  
13 Commission regulations regarding general election funds. Because Guinta was a candidate in  
14 the general election, there is no issue of the Committee having enough cash on hand to refund its  
15 general election contributors. And unlike other matters where the Commission proceeded past  
16 the reason to believe stage, the disbursement here was not made to pay for primary election

<sup>27</sup> *Id.* § 102.9(e)(2); *see also* Advisory Opinion 1986-17 (Green) at 4 (“[T]he Act does not prohibit [an authorized committee] from using contributions designated for the general election to make expenditures, prior to the primary election, exclusively for the purpose of influencing the prospective general election . . . .”); *cf.* Advisory Opinion 2016-16 (Gary Johnson 2012) (discussing that a committee may use general election funds to pay civil penalties and reimbursements to the U.S. Treasury).

<sup>28</sup> Advisory Opinion 1992-15 (Russo for Congress) at 1.

<sup>29</sup> 11 C.F.R. § 102.9(e)(3); *see also id.* § 110.1(b)(3)(i) (“If the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated . . . , or reattributed . . . , as appropriate.”).

<sup>30</sup> Compl. at 2, MUR 7093.



1 expenses.<sup>31</sup> Moreover, any potential violation was created because the Committee complied  
2 with the terms of the CA and refunded \$355,000 to the Guinta Family Fund prior to the primary  
3 election. Accordingly, the Commission dismisses the allegation that the Committee violated 11  
4 C.F.R. § 102.9(e)(2).<sup>32</sup>

<sup>31</sup> See, e.g., MUR 6639 (Gary Johnson 2012, Inc.) Factual & Legal Analysis at 6.

<sup>32</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).